



Stage 1 Interview Summary: Yves Côté, Mylène Gigou and Al Mathews

Yves Côté, former Commissioner of Canada Elections, Mylène Gigou, Senior Director of Enforcement, and Al Mathews, Strategic Advisor were interviewed by Commission counsel on March 18, 2024.

Notes to reader

- Commission Counsel have provided explanatory notes in square brackets to assist the reader.
- This summary contains information that relates to the Commission's mandate under clauses (a)(i)(A) and (B) of its Terms of Reference. Information provided during the interviews that relates to other aspects of the Commission's Terms of Reference has been omitted from this summary but may be adduced by the Commission at a later stage of its proceedings.

1. Background

1.1 Yves Côté

- [1] Mr. Côté is the former **Commissioner of Canada Elections (CCE)**, a position he held from 2012 to June 2022. Prior to this position, he was Associate Deputy Minister at the Department of Justice Canada. A lawyer by training, he has previously served as Ombudsman for the Canadian Armed Forces and has held various positions in the Canadian Armed Forces (member of the Office of the Judge Advocate General), the Department of Justice, and the Privy Council Office.
- [2] After leaving his position as CCE, he served as Senior Policy Advisor for the Public Order Emergency Commission ("Rouleau Commission").
- [3] Mr. Côté holds a Top Secret security clearance.

1.2 Mylène Gigou

- [4] Ms. Gigou is the Senior Director of Enforcement at the **Office of the Commissioner of Canada Elections (OCCE)**. Prior to that she was Director of Investigations, a position she held from March 2018 to April 2021. She joined the OCCE as a senior investigator in 2017. She previously held various positions at the Competition Bureau, where she had responsibilities, among others, for investigating bid-rigging and price fixing under the *Competition Act*. She holds a law degree.
- [5] In her current role as Senior Director of Enforcement, she reports directly to the Executive Director of Enforcement, Carmen Boucher. Prior to this change in reporting, she reported directly to the Commissioner.
- [6] Ms. Gigou is responsible for all operational files, whether they are under review or investigation. Her responsibility begins once a complaint is assigned to the enforcement directorate. She noted that treating these files sometimes requires collaboration with other OCCE sectors, including the communication group legal services and the Deputy Commissioner.¹
- [7] Ms. Gigou holds a Top Secret security clearance.

1.3 Al Mathews

- [8] Mr. Mathews has been a senior investigator/lead investigator at the OCCE, a position he has held since 2008. He now holds the title of Strategic Advisor. Prior to joining the OCCE, he spent 38 years in law enforcement with the RCMP, reaching the rank of superintendent before retiring from the force. He holds a law degree.
- [9] Mr. Mathews described himself as having the “institutional memory” of the OCCE, given the length of time he has spent at the office in investigations. During GE43, Mr. Mathews was a lead investigator and a general election coordinator. He held the same roles during GE44.
- [10] He holds a Top Secret security clearance.

¹Mr. Côté explained that the OCCE’s organizational structure consisted of three main groups: the Deputy Commissioner’s group, the Investigation group, and the Corporate Services group.

2. Approach to Foreign Interference at the time of GE43 and GE44

- [11] Mr. Côté explained that foreign interference became a major concern for the OCCE in the year leading up to the 2019 general election. He was mindful of the problems associated with the 2016 presidential election in the United States, as well as some election-related issues in Europe. He had no reason to believe that Canada would be spared. The OCCE considered how the country might be affected.
- [12] The OCCE took proactive steps to establish closer ties with law enforcement, security, and intelligence agencies (RCMP, CSIS, CSE, and GAC²) so that these organizations would be more aware of the OCCE's mandate.
- [13] Consultations were frequently held with the Chief Electoral Officers of the various provinces (following their respective elections) to keep abreast of potential reportable matters.
- [14] To raise its investigators' awareness of foreign interference and its different potential forms, the OCCE also invited a former Canadian Ambassador to China and a former CSIS Director to speak about their experiences. The OCCE also organized workshops with visiting professors and experts on the subject, as well as with Justice Department lawyers on the process of requesting international mutual assistance from foreign countries. The OCCE also maintained ties with the Canadian Association of Chiefs of Police so that information about its role and mandate could be disseminated as widely as possible throughout the various police forces across the country.
- [15] Prior to the 2019 elections, discussions also took place with an Australian senior civil servant working in the electoral field (on secondment with Elections Canada), as Australia is also facing China's growing presence and influence.
- [16] The OCCE also established contacts with digital platforms, including Facebook, Twitter, and Microsoft, to set up communication channels and clear rules of engagement in the

²The Royal Canadian Mounted Police (RCMP/GRC), the Canadian Security Intelligence Service (CSIS/SCRS), the Communications Security Establishment (CSE/CST), and Global Affairs Canada (GAC/AMC).

event that one of these platforms would need to urgently respond to a request from the CCE during an election campaign.

- [17] Ms. Gigou explained that part of the mandate in 2019 and 2021 was to build relationships with the digital platforms, understand their internal mechanisms and what considerations applied in the event they were to request that content be taken down or should the OCCE be seeking information held by the platforms. There was good cooperation with the digital platforms.
- [18] Ms. Gigou explained that the OCCE also participated in collaboration initiatives led by partner agencies. These would then lead to OCCE-specific initiatives. For example, the OCCE engaged with LinkedIn as a result of contacts initiated by CSIS and with Microsoft and Google as a result of engagements with Elections Canada.
- [19] There was no contact with the WeChat platform specifically in preparation for either the 2019 or the 2021 elections. Ms. Gigou commented on extensive knowledge held by GAC on WeChat and information sessions provided by GAC to the OCCE.
- [20] With respect to social media, and the lead up to the 44th federal general elections, one concern held by the OCCE was the ongoing shift towards deplatforming and maintaining visibility on non-traditional platforms.
- [21] The OCCE also carried out awareness-raising activities with the media in order to increase public knowledge of the Office, in the event that the media received complaints from political parties or concerned citizens. This action was aimed at raising public awareness through the media.
- [22] The OCCE has worked hard to increase its visibility to the Canadian public. Nonetheless, Mr. Côté believes that relatively few ordinary citizens are aware of the Office's existence.
- [23] The OCCE has also worked directly with political parties, among others, through the Advisory Committee of Political Parties. The OCCE also created a 24/7 hotline during each election campaign so that the parties' designated persons could reach OCCE lawyers as quickly as possible.

2.1 Foreign interference and the OCCE's mandate

- [24] The mandate of the OCCE is to ensure compliance with the *Canada Elections Act* (CEA), and, more broadly, to ensure the integrity of Canadian elections.
- [25] The CEA does not provide for a specific offence regarding “foreign interference,” but several sections may apply to cases of foreign interference.
- [26] One of the problems regarding foreign interference is what Mr. Côté called “unknown unknowns.” The source of funds are easy to conceal, and this information is difficult to uncover during an investigation. Mr. Côté offered a hypothetical example in which a foreign entity goes through an accomplice intermediary to make a financial contribution, unbeknownst to the candidate or campaign receiving the funds.
- [27] The **Financial Transactions and Reports Analysis Centre of Canada (FINTRAC/CANAFE)** does not share information with the OCCE: there is no memorandum of understanding. To obtain intelligence from FINTRAC, the OCCE must go through the RCMP. In order for the OCCE to receive this information, FINTRAC's enabling legislation would have to be amended. To the best of his knowledge, the OCCE did not receive any intelligence relating to the transfer of money through intermediaries, as described in paragraph 26, during Mr. Côté's tenure.

2.2 Foreign interference provisions of the CEA

- [28] Commission counsel then turned the conversation to the OCCE's interpretation of certain provisions of the CEA that may be relevant to foreign interference during Mr. Côté's tenure.

2.2.1 Section 282.4 of the CEA

- [29] Section 282.4 of the CEA prohibits foreigners from exercising undue influence on an elector. The concept of “unduly influencing” involves, inter alia, “knowingly” incurring “any expense.” The examples given are paying, incurring costs, and spending money to achieve the objective. The notion of “knowingly” requires proof of guilty intent. This is an important point.

- [30] Merely expressing an opinion or the desire that voters support or oppose a given candidate or party does not constitute “undue” influence within the meaning of the CEA. Subsection 282.4(3) contains significant exceptions. It is important to understand them well.
- [31] During Mr. Côté’s tenure, several complaints were reviewed under this section, but no action could be taken [due to insufficient evidence or the scope of the provision] and no charges were ever laid.

2.2.2. Section 349.02 of the CEA

- [32] Section 349.02 of the CEA prohibits third parties from using funds originating from a foreign entity for a partisan activity or election advertising. Mr. Côté explained that this provision is very complex to enforce. Sophisticated actors can engage in what is known as “comingling” of funds. For example, a third party can raise funds and receive a contribution from a foreign entity. These funds are mixed in with other funds, making it difficult, if not impossible, to know where the money for the partisan activity or election advertising came from.

2.2.3 Section 363 of the CEA

- [33] Section 363(1) of the CEA provides that only Canadian citizens and permanent residents can make a contribution to a candidate, party, nomination contestant, or leadership contestant. Consequently, foreigners are prohibited from making contributions.
- [34] Mr. Côté provided an example of a contravention of this provision that would be difficult to detect: a person who is ineligible to donate gives money to a person who is eligible make a contribution in order to circumvent the prohibition, thereby violating section 368 of the CEA.
- [35] Ms. Gigou notes that the CEA is a complex statute that contains more than 600 contraventions or prohibitions. It requires a big knowledge set and regular consultation with legal services. There are a number of provisions in the CEA that, depending on the fact scenario, could apply in a case of foreign interference and the deck shared with partner agencies such as the RCMP and CSIS contained provisions dealing with the core offences most likely to apply to allegations of foreign interference.

2.2.4 Section 282.8 of the CEA

- [36] Section 282.8 of the CEA states that no person shall, by intimidation or duress, compel or attempt to compel a person to vote in a certain way, or to vote or to refrain from voting. It also states that no person shall, by any pretence or contrivance, influence or attempt to influence a person to vote or to refrain from voting, in general or for a particular candidate.
- [37] Mr. Côté points out that freedom of expression is at its maximum in the electoral or political environment. This consideration must always be borne in mind. Some people are may certainly be motivated by malicious intent in order to mislead others or to make them believe false things, for example. During election campaigns in Canada, it is not uncommon for people to use highly partisan, emotionally charged, and accusatory language. The bar is set quite high. All these elements need to be considered when determining whether this provision has been contravened. It would therefore be necessary to demonstrate reprehensible conduct (i.e., something other than political speech or expression).
- [38] Commission counsel asked Mr. Côté whether this provision could be used in a disinformation campaign. He replied that it could, and that he thought he recalled the OCCE's lawyers having produced a memo on the subject.

3. Relationship with Elections Canada

- [39] Mr. Côté emphasized that he has always maintained an open and frank relationship with **Elections Canada (EC)**, while respecting the separation between their respective roles. He referred to the protocol negotiated with the Chief Electoral Officer that sets out the key guiding principles governing the relationship between their respective offices.³
- [40] The OCCE receives complaints from the EC in two forms: redirected complaints and referrals. Referrals are packaged by EC after their analysis (for example, following audits by EC of financial reports filed by campaigns). In essence, in those cases, EC becomes the complainant. Redirected complaints are those that are incorrectly made to EC

³ The protocol can be found here:
<https://www.elections.ca/content.aspx?section=abo&dir=cce&document=princip&lang=e>

(generally by members of the public) and fall within the proper jurisdiction of the OCCE and are redirected by EC to the OCCE.

- [41] OCCE does not monitor social media. However, EC does to some extent. On occasion, EC has referred to the OCCE information it identified on social media. OCCE can make specific requests to EC for information as part of a review or an investigation.
- [42] During the 2019 and 2021 elections, EC and OCCE had a system for ensuring the flow of information between the two bodies remained constant. Communications were generally split up between tier 1 and tier 2 calls. Tier 2 calls involved urgent matters that warranted significant attention. This was not specific to foreign interference. Ms. Gigou and Mr. Mathews were both involved in tier 2 calls.
- [43] There were also ad hoc calls outside of the structured engagement. Relationships were forged whereby there was no hesitation to call a counterpart in relation to a matter while maintaining separation of distinct roles, independence and confidentiality.

3.1 Information flow

- [44] Information about reviews or investigations conducted by OCCE would not flow back to EC, except in cases where EC transferred a file to OCCE acting essentially as a complainant, for example, through referrals. In such cases, OCCE would inform EC of how the files was dealt with.
- [45] The information typically flows one way: from EC to OCCE. An exception would be where the OCCE made a 'request for information' to EC, in which case EC would know that the OCCE is interested, for example, in a particular candidate, party or campaign.

4. Reviews and Investigations

- [46] Commission counsel asked Mr. Côté and Ms. Gigou to explain how decisions were made to open an investigation following the receipt of a complaint during Mr. Côté's tenure as Commissioner.
- [47] Following the receipt of a complaint, there is an initial reading and screening to ensure that the complaint falls within the OCCE's jurisdiction. When there seems to be something

contrary to the CEA, the file is assigned to someone in the investigation group to see if there are grounds for launching an investigation. If the investigator believes that the required threshold is met, the investigator prepares a written recommendation, which is reviewed by legal services and submitted to the Commissioner, who then decides whether to authorize an investigation.

- [48] A review is a prima facie analysis. If it reveals that further steps are required, they can be taken on as part of a review, or an investigation can be launched if the threshold for opening an investigation has been met.
- [49] Ms. Gigou added that there can be several investigative steps taken within a review. Considerations include whether the complaint falls within the OCCE's jurisdiction, whether there is information to support the allegation and whether a review or investigation is warranted.

4.1 Investigative powers and techniques

- [50] The OCCE has several investigative powers and techniques in its toolbox. In addition to gathering evidence and interviewing witnesses, OCCE investigators can obtain production orders and sometimes even search warrants. They also have the power, under circumstances that are well circumscribed in the law, to seek an order from a Superior Court judge to compel a person to answer questions under oath or to produce documents.
- [51] The OCCE does not conduct physical surveillance, nor does it use wiretaps or confidential sources.
- [52] In accordance with the memorandum of understanding, the OCCE may call on the RCMP for certain information requests or assistance.
- [53] Ms. Gigou added, for example, that the OCCE had concerns about the use of DeepFakes in the lead-up to both the 2019 and 2021 elections. In this area, the OCCE engaged with the RCMP to increase its understanding of the technology and the tools available.
- [54] When a case has an international component, the OCCE may initiate a process to obtain **international mutual legal assistance (MLAT)**. However, the process can be long and complicated, even when it involves an allied country. Even when the OCCE receives

requested information, extraditing and bringing the suspect before a court in Canada remains problematic. When the OCCE is dealing with a country from which little or no cooperation is expected, the challenge becomes virtually insurmountable.

5. Relationships with law enforcement and other services

5.1 RCMP

- [55] When it comes to the relationships between the OCCE and law enforcement agencies, the most tangible links are with the RCMP. Mr. Côté pointed out that several OCCE investigators are former RCMP members. There was a memorandum of understanding with the RCMP in place in 2019, as well as another one prior to it.
- [56] There were bilateral meetings with the RCMP in the lead-up to both federal elections. In a meeting with RCMP on March 21, 2019⁴, there was a discussion pertaining to the sharing of intelligence. In that meeting, RCMP representatives indicated that it would be preferable for the OCCE to get a memorandum of understanding (MOU) with CSIS. Subsequent to that, the BCEF made contact with CSIS to get this done, and Commissioner Côté had a meeting with Mr. Vigneault on this subject.
- [57] Over the years, the RCMP has, at times, inquired as to how certain rules and provisions of the CEA would apply to certain factual situations (e.g. how political contributions are tracked or accounted for, and whether funds can be hidden in a campaign's bank account, etc). In these conversations, the RCMP does not share the nature or facts of any investigation they may be carrying out.
- [58] Ms. Gigou noted that the OCCE's engagement with local and provincial police forces occur on a more ad hoc basis to the extent there were election-specific and riding-specific considerations, including potential parallel jurisdiction where *Criminal Code* provisions may be triggered.
- [59] The OCCE also held engagement activities with the Chief of Police Association in 2019 and 2021.

⁴ CEF0000049_R2

5.2 CSIS and CSE

5.2.1 CSIS

- [60] Mr. Côté reported a good working relationship with CSIS. The OCCE and CSIS signed a memorandum of understanding in September 2019.⁵ Mr. Côté and CSIS Director David Vigneault had known each other before assuming their respective positions, so there was a history of people knowing and respecting each other.
- [61] There were, however, several constraints on the communication of intelligence. Some of the intelligence gathered by CSIS through investigative techniques is privileged and must be protected. Consequently, intelligence derived from these techniques or sources is shared with serious caveats and limitations. Even when intelligence is shared, the challenge of determining what can be done with it while respecting these caveats and limitations persists. Very often, the actionable intelligence is far less substantial than that what was originally received.⁶
- [62] None of the interview participants recalled receiving any information from CSIS about foreign interference in connection with the 43rd and 44th general elections that the OCCE was able to use in an investigation.
- [63] Ms. Gigou added that the ‘intelligence to evidence’ challenge is not unique to the OCCE. She described the process of receiving the intelligence. This is either in the form of a briefing or a review of intelligence products. CSIS holds the record. The OCCE has no means of receiving, noting or storing the classified information at the top secret level. The information is reviewed with a view to determining whether or not it fits in the OCCE’s mandate, and to consider the form of a potential ‘use letter’ if necessary.
- [64] In the lead up to the 2019 election, there were various contacts with CSIS for relationship building and establishing lines of communication. CSIS also shared some intelligence. In August 2019, there was a meeting with CSIS and RCMP to discuss deconfliction mechanisms. Ahead of the MOU, there were ongoing discussions with the understanding

⁵ CEF0000043, CEF0000044.

⁶ This is often referred to as the “intelligence to evidence” challenge.

that even if there was no MOU in place before September 2019, they would proceed on an informal basis much like the terms of the eventual MOU.

- [65] CEF0000046_R2 is a letter dated January 4, 2019 that refers to a meeting on November 21, 2018 between the OCCE and CSIS. In this letter, Ms. Gigou provides a brief overview of the OCCE and core CEA provisions applicable to foreign influence.
- [66] CEF0000056_R2 is a document pertaining to notes to a telephone meeting that took place at the request of CSIS on January 13, 2020. The meeting concerned whether federal leadership party races fall within the CCE's mandate and whether it was covered by the CEA. The OCCE explained that leadership races are run according to party constitutions and there is very little relating to leadership races that falls within the CCE's mandate, other than rules relating to political contributions and expenses.
- [67] CEF0000059_R2 is a letter dated February 3, 2021 referring to a meeting on January 12, 2021 between OCCE and CSIS. In this letter, Ms. Gigou provides a brief overview of the OCCE and of the core CEA provisions applicable to foreign influence. The purpose of this correspondence was to remind her CSIS counterpart of key provisions under the CEA that can apply to foreign influence in federal elections.
- [68] CEF0000064_R2 is an email exchange between Ms. Gigou and CSIS where Ms. Gigou requests access to intelligence assessments previously shared by CSIS with the OCCE since 2018. The purpose of this request was to review the material in light of allegations that had been recently published in the news.
- [69] Ms. Gigou indicated that the OCCE received classified briefings from CSIS with respect to foreign interference in connection with GE43 and GE44. The briefings involved a combination of fact-specific and general information. She estimates the OCCE participated in 15-20 meetings with CSIS between 2018 and 2024.
- [70] Ms. Gigou described one instance of an urgent meeting requested by CSIS in October 2019 during the election period. This meeting was held on the Saturday before polling day, pursuant to the so-called one-vision process. This would likely have resulted in a classified intelligence 'use letter'. Ms. Gigou directed any questions regarding the content of the meeting to CSIS.

5.2.2 CSE

[71] With respect to the CSE, there was not the same level of engagement. There was no MOU between the OCCE and the CSE. However, in the lead up to both the 2019 and 2021 elections, CSE did provide a briefing to the OCCE and there was a designated contact established for both organizations if communication was required.

5.3 SITE Task Force

[72] There was no formal relationship between OCCE and SITE during the 43rd and 44th federal general elections. With the exception of two specific meetings (see paragraph 74 below), the engagement that took place was rather with SITE members but not SITE itself.

[73] The OCCE did not receive any actionable information related to foreign interference from SITE. The OCCE did receive information from GAC RRM, in the form of analysis and reporting rather than actionable information.

[74] CEF0000046_R2 is notes prepared by Ms. Gigou from a meeting with SITE task force members held on March 15, 2019. Following the meeting, Ms. Gigou circulated to participants a copy of the OCCE presentation deck as well as a document outlining provisions pertaining to foreign influence in the CEA⁷. A workshop was also delivered by the OCCE to a larger group of employees of the organizations members of the SITE task force on May 1, 2019.

5.4 GAC and RRM

[75] Asked about the relationship the GAC RRM, M. Côté redirected the question to Ms. Gigou. He would receive information from Ms. Gigou when necessary but he was not directly involved.

[76] CEF0000062_R2 contains a letter dated June 15, 2021 which references a meeting held between OCCE and GAC's RRM where they discussed current and future engagement. Ms. Gigou provided a general overview of the OCCE as well as an overview of the core

⁷ CEF0000048.

provisions of the CEA pertaining to foreign influence. This was done to ensure that the RRM team had current information as to the OCCE's role and what it does.

[77] Neither Mr. Mathews nor Ms. Gigou could recall an instance where the OCCE communicated information to the RRM during GE43 and GE44. Mr. Mathews did not recall ever receiving actionable information from RRM either.

[78] With respect to GAC, the OCCE obtained the authorization of the CCE to disclose information obtained pursuant to two complaints of a video allegedly originating from a Russian domain (.ru). After carefully reviewing the matter, the OCCE took the decision to disclose this information to GAC. This was done in the course of a meeting with GAC, during which GAC indicated that they were aware of the matter.

6. Files related to FI allegations springing from GE43

[79] Commission counsel inquired about the files containing allegations of foreign interference, springing from the 43rd general election.

CEF 0000164

[80] This file comprised multiple complaints over a Time Magazine story published during the 2019 election cycle reporting on Justin Trudeau appearing in black/brownface costumes earlier in his life. The story became headline news during the 43rd general election.

[81] Mr. Mathews explained that there is a misguided perception among members of the public that any foreign commentary on an election is illegal. However, that is not what the CEA is designed to do. Publications, commentary, editorials, opinions are all excepted from the prohibition against undue foreign influence [s. 282.4(3) CEA].

[82] Mr. Mathews also noted that any expenses incurred by Time Magazine to publish the story is not a relevant consideration given the exceptions under s. 282.4(3) CEA are absolute.

[83] The review of the facts in this case did not warrant launching an investigation. Once the OCCE received the last wave of complaints, staff made the recommendation to close the file, which the Commissioner signed off on. The Commissioner was also involved in the

review of the proposed responses to the complainants given the profile of the allegations (the leader of one of the recognized parties in the House of Commons) and the high level of public interest in the matter.

CEF0000008_R2

[84] This files involved complaints that an American reportedly agreed to cover security costs for a People's Party of Canada event. An OCCE investigator contacted the Party's chief agent who informed them that the costs would be covered by the local riding association. After reviewing the facts, the OCCE found that no monetary or non-monetary contribution had been made by the American national—and thus no violation of the CEA—and the file was closed.

[85] Mr. Mathews added that foreign volunteers coming to work on Canadian electoral campaigns is not per se illegal. The CEA does not prohibit buying and paying for services, whether provided by Canadians or foreigners. There may be however a campaign financing problem if the campaign is undervaluing or underreporting the costs of their services.

CEF00000015_R2

[86] This matter involved a complaint about a Chinese-language news video broadcast from inside a poll that raised concerns of foreign interference in Canadian elections.

[87] The matter was closed because 1) the CEA prohibits a candidate's representatives from taking a photograph or recording audio or video at a polling station, but not media or members of the public; 2) the video originated from Fairchild TV. which is a Canadian broadcaster that broadcasts in Cantonese; and 3) there was some evidence that the broadcast may have been from a previous election.

CEF00000016_R2

[88] This file comprised multiple complaints over tweets made by former US president Barack Obama endorsing Justin Trudeau on Twitter. Once the OCCE received the last wave of complaints, the matter was closed as the activity was not prohibited under the s. 282.4 CEA. For each of these complaints, the complainants received a letter informing them of the OCCE's decision.

[89] Commission counsel asked Mr. Côté, Ms. Gigou and Mr. Mathews about such complaints that fall clearly outside the OCCE's mandate or that contain broad and high-level allegations without specific or tangible information to support the allegations. The interviewees responded that it is not unusual.

Liberal Party nomination contest in Don Valley North

[90] Commission counsel then asked whether the OCCE conducted any investigation into the allegations of irregularities related to the Liberal nomination contest in Don Valley North, and whether Mr. Côté was aware of such allegations during his tenure as CCE. Both questions were taken under advisement.

7. Files related to FI allegations springing from GE44

[91] Commission counsel then inquired about the files containing allegations of foreign interference, springing from the 44th federal general election.

CEF0000158

[92] This matter involved a complaint with respect to certain comments about the Canadian elections made by the Chinese ambassador to Canada in a news interview. After a review of the facts, the matter was closed as the statements fell into one of the exceptions provided for by s. 282.4(3) CEA.

CEF0000157

[93] This matter involved a complaint alleging Chinese agents posting messages on a Chinese-language social media forum strongly urging Chinese Canadians not to vote for the Conservative Party of Canada (CPC). The complaint enclosed screenshots of social media posts and articles in Chinese. The matter was reviewed for a potential contravention of s. 282.4 CEA and s. 282.8 CEA.

[94] The OCCE investigator observed that different views were being exchanged for and against the CPC. Furthermore, it was noted that there was nothing offensive or violent in the language. It was argumentative, in the course of an exchange among people expressing firm views. The matter was closed, as the review did not identify tangible

evidence to substantiate the elements of the offence of undue foreign influence and the publications fell into one of the exceptions under s. 282.4(3) CEA.

CEF0000156

- [95] This matter involved complaints received during the 2021 general election over a lunch event for the Liberal Party candidate in the electoral district of Vancouver East. It was alleged that the lunch event was paid for by a person known to be active in the Chinese community in the Greater Vancouver area.
- [96] The allegations and the facts met the threshold for initiating an investigation. OCCE investigators found that it was the Liberal Party campaign that reached out to the organizer of the lunch. The candidate expected to meet 10 people or so, but there were over 100 people attending the event. The organizer of the lunch indicated through his lawyer that he paid \$1,500 for the lunch. The restaurant in question refused to provide a receipt of the lunch.
- [97] The facts collected indicated that the campaign failed to report the expense associated with the lunch or any non-monetary contribution for this event. The investigation was completed during Mr. Côté's tenure as Commissioner, but the compliance assessment remained under review. The matter was recently concluded under Ms. Simard's tenure as Commissioner, and resulted in an **Administrative Monetary Penalty (AMP)** being issued to the official agent for not reporting the lunch event paid for by a contributor as a non-monetary contribution, nor as an election expense on the campaign Return.
- [98] Ms. Gigou noted that this file, pursued under the administrative regime, is an example of how the OCCE has limited tools to compel the production of documents (i.e. evidence associated to the costs of the lunch) when proceeding under the administrative regime.

CEF0000159

- [99] This matter involved a complaint submitted during the 2021 general election expressing concern that foreign agents affiliated with the Chinese Communist Party may be interfering in the election. The complaint enclosed three screenshots of social media messages in Chinese. Some of these posts were described by OCCE staff as being

critical of the Conservative Party of Canada (CPC) and referenced the “potential impact” of Bill C-282 tabled by MP Kenny Chiu.

[100] The matter was reviewed for a potential contravention of s. 282.4 CEA [undue influence by foreigners]. Investigative steps included attempting to contact the complainant identified in the complaint. Extensive open-source research was also conducted by an OCCE analyst that identified ties between the individuals related to the posts and publications, and ties to China-based entities with potential links to the **Communist Party of China (CCP)**.

[101] Despite the investigative steps taken and alleged links identified, the review did not identify tangible evidence to substantiate the essential elements of the offence of undue foreign influence or link the facts to any other offence under the provisions of the CEA. Further, the OCCE could not reach the complainant. It is not clear whether that was because there was a mistake in identity or the individual whom investigators did reach was the complainant but who had since got cold feet about the continuing with the complaint.

[102] A meeting of the OCCE’s **Strategic Enforcement and Compliance Initiative Committee** [referred to by its French acronym as “**CISOCA**”] was held at the end of March 2022. The Commissioner sits on this committee that deals, among others, with complex files. Other members of the Committee include representatives of the Legal Services branch. There was a frank and open discussion as to next steps for files 2021-0533⁸, as well as two 2021-817⁹ and 2021-825¹⁰.

[103] There was a consensus that file 2021-0533 [CEF0000159] was severely limited by the situation of the complainant. Another consideration, which was also an element taken into account in the decision-making process with respect to this file, was that neither MP Kenny Chiu, nor anyone on his behalf, brought a complaint or contacted the OCCE in relation to this matter. The Commissioner ultimately decided to close this file. The other two files were closed as well, based on other legal considerations.

⁸ CEF0000159

⁹ CEF0000158

¹⁰ CEF0000157

[104] The open-source research report produced by the OCCE analyst in file 2021-0533 [CEF0000159] was not shared with partner agencies in law enforcement, or the security and intelligence services. The Commissioner was not asked to authorize disclosure to a partner agency. While the OCCE assumed that CSIS would have the information contained in the report given that it was collected using open-source research, Ms. Gigou also indicated that except in one specific instance outside the scope of this inquiry, she does not recall being informed by CSIS of parameters of information that they would be interested in receiving from the OCCE. Ms. Gigou indicated that because of the obligations of confidentiality and the independence of the OCCE, disclosure of information would be carefully assessed based on the criteria in the CEA.

[105] The OCCE sees itself primarily as a recipient – rather than a provider – of information, similar to how most investigative bodies and police forces operate. It was noted in that regard that the CEA contains strict confidentiality provisions. RCMP and CSIS may look at matters involving elections that fall outside the scope of the OCCE mandate, and may make inquiries to the OCCE.

8. Final comments

[106] Mr. Mathews noted that foreign interference in elections was not a major issue prior to the 2016 US election and the subsequent presidency of Donald Trump in the United States. With increased awareness following these events, foreign interference became a concern in the lead up to the 2019 and 2021 elections.

[107] Ms. Gigou noted that the 2021 election was distinct as it required delivering an early election during the COVID pandemic with the accompanying public health restrictions and climate of increased polarization. For example, one of the concerns the OCCE had was that the voting process might be interfered with in various ways by protesters. This was seen as a serious risk to the electoral process that deserved a high level of priority.